

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY MICHAEL GIOIOSA, SR.,
Plaintiff,
v.
NRS EXPIRATION,
Defendant.

Case No. 2:22-cv-00671-GMN-VCF
ORDER

Plaintiff Anthony Michael Gioiosa, Sr. attempted to initiate a civil lawsuit with a document titled “Affidavit from New Years Eve Law.” (ECF No. 1-1). On February 9, 2023, this Court ordered Plaintiff to file a complaint and an application to proceed *in forma pauperis* in this matter. (ECF No. 3). After receiving mail returned as undeliverable, the Court issued a second order directing Plaintiff to file a complaint, application to proceed *in forma pauperis*, and to update his address by April 28, 2023. (ECF No. 5). The Court sent Plaintiff a courtesy copy of the order to his current prison address. (*Id.* at 2). The Court warned Plaintiff that the action could be dismissed if he failed to comply with the order by that deadline. (*Id.*) That deadline expired, and Plaintiff did not respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;

1 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
2 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
3 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
4 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

5 The first two factors, the public's interest in expeditiously resolving this litigation
6 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
7 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
8 because a presumption of injury arises from the occurrence of unreasonable delay in filing
9 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
10 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
11 cases on their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can
13 be used to correct the party's failure that brought about the Court's need to consider
14 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
15 that considering less drastic alternatives *before* the party has disobeyed a court order
16 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
17 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
18 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
19 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
20 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
21 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
22 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
23 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until
24 and unless Plaintiff files a complaint, application to proceed *in forma pauperis*, and
25 updates his address, the only alternative is to enter a third order setting another deadline.
26 But the reality of repeating an ignored order is that it often only delays the inevitable and
27 squanders the Court's finite resources. The circumstances here do not indicate that this
28 case will be an exception: there is no hint that Plaintiff needs additional time. Setting

1 another deadline is not a meaningful alternative given these circumstances. So the fifth
2 factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that they
5 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
6 prejudice based on Plaintiff's failure to file a complaint, an application to proceed *in forma*
7 *pauperis*, and an updated address in compliance with this Court's February 9, 2023, and
8 March 31, 2023, orders. The Clerk of Court is directed to enter judgment accordingly and
9 close this case. No other documents may be filed in this now-closed case. If Plaintiff
10 wishes to pursue his claims, he must file a complaint and an application to proceed *in*
11 *forma pauperis* in a new case and provide the Court with his current address.

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13 DATED THIS 1st day of May 2023.

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17 UNITED STATES DISTRICT JUDGE
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